

**CITY OF NEWARK
DELAWARE
COUNCIL MEETING MINUTES**

July 9, 2018

Those present at 5:30 p.m.:

Presiding:	Mayor Polly Sierer District 2, Jerry Clifton District 3, Jen Wallace District 4, Chris Hamilton District 5, Jason Lawhorn District 6, Stu Markham
Absent:	District 1, Mark Morehead
Staff Members:	Acting City Manager Tom Coleman City Secretary Renee Bensley City Solicitor Paul Bilodeau Communications Manager Kelly Bachman Community Affairs Officer Megan McGuriman Parks & Recreation Director Joe Spadafino Electric Director Bhadresh Patel Finance Director David Del Grande Acting Public Works & Water Resources Director Tim Filasky Assistant to the Managers Mark Brainard Planning & Development Director Mary Ellen Gray Planner II Mike Fortner Planner Tom Fruehstorfer Lieutenant Dennis Aniunas, NPD

1. Ms. Sierer called the meeting to order at 5:30 p.m.

2. **EXECUTIVE SESSION**

- A. Executive Session pursuant to 29 *Del. C.* §10004 (b)(1), (4) and (9) for the purpose of a discussion of individual citizens' qualifications to hold a job, a strategy session with respect to pending or potential litigation, when an open meeting would have an adverse effect on the litigation position of the public body and discussing personnel matters in which the names, competency and abilities of individual employees are discussed.
- B. Executive Session pursuant to 29 *Del. C.* §10004 (b)(6) and (9) for the purpose of discussion of the content of documents, excluded from the definition of "public record" in §10002 of this title where such discussion may disclose the contents of such documents and the discussion of personnel matters in which the names, competency and abilities of individual employees are discussed.
- C. Executive Session pursuant to 29 *Del. C.* §10004 (b)(4) and (6) for the purpose of a strategy session involving legal advice from, an attorney-at-law, with respect to potential litigation when an open meeting would have an adverse effect on the litigation position of the public body and discussion of the content of documents, excluded from the definition of "public record" in §10002 of this title where such discussion may disclose the contents of such documents.
- D. Executive Session pursuant to 29 *Del. C.* §10004 (b)(4) and (6) for the purpose of a strategy session involving legal advice from an attorney-at-law, with respect to potential litigation when an open meeting would have an adverse effect on the litigation position of the public body and discussion of the content of documents, excluded from the definition of "public record" in §10002 of this title where such discussion may disclose the contents of such documents.

MOTION BY MS. WALLACE, SECONDED BY MR. CLIFTON: TO ENTER EXECUTIVE SESSION PURSUANT TO TITLE 29, SECTION 10004 FOR FOUR ITEMS FOR (B)(1) AND (9) SUBSECTIONS AND FOR ITEMS (B)(4) AND (B)(9) SUBSECTIONS FOR THE PURPOSE OF A DISCUSSION OF INDIVIDUAL CITIZENS' QUALIFICATIONS TO HOLD A JOB AND DISCUSSING PERSONNEL MATTERS IN WHICH

THE NAMES, COMPETENCY AND ABILITIES OF INDIVIDUAL EMPLOYEES ARE DISCUSSED AND FOR THE PURPOSE OF A STRATEGY SESSION WITH RESPECT TO PENDING OR POTENTIAL LITIGATION, WHEN AN OPEN MEETING WOULD HAVE AN ADVERSE EFFECT ON THE LITIGATION POSITION OF THE PUBLIC BODY AND DISCUSSION OF THE CONTENT OF DOCUMENTS, EXCLUDED FROM THE DEFINITION OF "PUBLIC RECORD" IN §10002 OF THIS TITLE WHERE SUCH DISCUSSION MAY DISCLOSE THE CONTENTS OF SUCH DOCUMENTS.

MOTION PASSED. VOTE: 6 to 0.

Aye – Clifton, Hamilton, Lawhorn, Markham, Sierer, Wallace.

Nay – 0.

Absent – Morehead.

Council entered executive session at 5:30 p.m. and exited executive session at 6:50 p.m.

3. RETURN TO PUBLIC SESSION

A. Potential vote from Executive Sessions

01:05

MOTION BY MR. MARKHAM, SECONDED BY MR. CLIFTON: TO DIRECT STAFF TO FOLLOW THE PATH FORWARD AS OUTLINED IN EXECUTIVE SESSION.

MOTION PASSED. VOTE: 6 to 0.

Aye – Clifton, Hamilton, Lawhorn, Markham, Sierer, Wallace.

Nay – 0.

Absent – Morehead.

4. MOTION BY MS. WALLACE, SECONDED BY MR. CLIFTON: TO MOVE ITEM 9C ON THE AGENDA TO FOLLOW 6A.

MOTION PASSED. VOTE: 6 to 0.

Aye – Clifton, Hamilton, Lawhorn, Markham, Sierer, Wallace.

Nay – 0.

Absent – Morehead

5. Ms. Sierer asked for a moment of silence and the Pledge of Allegiance. She reported Mr. Morehead would not be present at the meeting.

6. 1. PUBLIC PRESENTATIONS:

A. Elkton Road Multi Use Presentation – DelDOT

02:45

Matthew Vincent, DelDOT project manager, and his colleagues were present to offer detail on the Elkton Road project in design for several years. He noted he would provide the overview. He reported the project was a reconstruction of approximately a one and a half mile stretch of Elkton Road, from the Maryland state line to Casho Mill Road. He reported the road was in bad shape, so this was a full reconstruction of the road. There had been a few mill and overlay projects in the past to keep the road surface relatively drivable, but in the end, a full reconstruction was needed.

There would be a concrete pavement section and a full depth reconstruction of the roadway. This would include widening to three lanes on the northbound direction of travel on Elkton Road between Otts Chapel Road and SR-4. In addition, there would be pedestrian and bicycle improvements. There would be a bicycle-friendly roadway design, along with a 10 foot multi-use path for bikes and pedestrians on the south side on the entire length of the project. Also included would be signalization improvements including improving the signal and adding a fourth leg to the intersection of Elkton Road and McIntire Drive. That would provide improved access for the Dunkin Donuts at that intersection, as well as access to the City of Newark parcel adjacent to that Dunkin Donuts.

There would be additional lighting improvements, utility relocations and betterments throughout the project area. They would provide links to a number of other multi-use paths and recreational facilities along the corridor. He said this project had been in the design phase for a number of years and they were in the process of acquiring right-of-way. DelDOT expected to have that process completed early next year. This included advanced utility relocations, which would take place through the spring and summer of 2019. Roadway construction would start later in 2019 and go through 2021.

Mr. Dougherty reiterated there would be a lot of improvement for the corridor. He noted the multi-use path would be a connection in the East Coast Greenway, which was a larger greenway recreational trail that moved up and down the east coast. This would add an additional link to the trail and serve as a connector to the very popular Hall Trail. This was very good for the residents. The underground utilities would be moved outside the roadway footprint. This would be helpful in the future. The first step was to start patching roadways as they did inspections. There were weak links that could spread problems throughout the corridor and the hope was to move utilities outside a roadway footprint.

This included some of the City utilities, including the water line and sewer line from Newark. This would be done at DelDOT's expense. He noted there were two pedestrian bridges proposed along that greenway. These were solely for pedestrians as part of the greenway 10-foot wide bridge. DelDOT would build and maintain the bridges. Other improvements would be lengthening multiple turning lanes at some intersections, which should help alleviate some of the rear end accidents that have happened through the years and with the rush hour congestion.

He noted there were five parcels owned by the City along the corridor. The first crossing was over one of the branches of the Christina River. In order to build this, the state would need a temporary construction easement for their contractor to be able to access everything they needed to build. There was also a Delmarva utility pole in one corner and the state was looking to acquire a permanent easement so Delmarva Power could maintain it if needed. The state was considering acquiring a proposed right-of-way through the area. This would allow the state the opportunity to go ahead and replace, repair, and maintain the bridge whenever they needed. It would be the responsibility of the state. The other two parcels involved the area of the existing Dunkin Donuts and McIntire Drive. Currently drivers were making lefts across and into the front of the Dunkin Donuts, which was a dangerous move across opposing traffic. The proposed change would only permit drivers to make a right turn out of the Dunkin Donuts parking lot with a fourth access point at the intersection with signalization.

This would become the access point to a future City park in the area. There would be new signal equipment across the frontage. The state was going to need to acquire an easement to be able to maintain the area. There were electric lines that ran across here with a intermingling of aerial utilities including Delmarva Power and City poles. The state would also ask to acquire an easement across the frontage for maintenance.

The northeastern end of the project was near Gravenor Lane. This intersection would become wider, with double left turns, double right turns and other things for capacity and safety. In order to do that, they needed to put new signalization equipment in there. The existing electric line would need to move further down. In order to connect that back in, a straight line was required as it was difficult for them to make jagged turns, so there was a PE requested through the area to give them the opportunity to get up into the wires and move the Delmarva Power pole. A small TCE was needed as well which allowed a contractor to do grading in a temporary area. The last parcel at Gravenor Lane included another branch of the Christina River. There would be a pedestrian bridge added in the area which included links to the Rittenhouse Trail. DelDOT would like to acquire a right-of-way for fixing the bridge and grading. Also included is some PE in order to get some access for utility repairs and maintenance.

Ms. Parrett reiterated there were five parcels owned by the City of Newark being impacted by the project for various types of easements and some minor right-of-way acquisitions that were needed for DelDOT to be able to do the project. DelDOT's hope was that the City of Newark would be able to see the perceived benefits to the City and its residents to facilitate their pedestrian and bicycle movement. To help offset the cost of the project, DelDOT requested that the City of Newark donate the areas needed for the project for those easements. The square footages were minor, given the overall size of the parcels that were impacted and she would be able to provide a spreadsheet, listing what those areas were and what the remaining land would be for each individual parcel. If the City was willing to donate the areas it could be worked into the town agreement DelDOT typically worked out with municipalities when doing work within the municipalities boundaries. The finalized document including any recorded easements or deeds would then be done following the execution of the town agreement.

The Chair opened the discussion to questions from the table.

Ms. Sierer asked DelDOT to provide information about long term maintenance to the improvements including the trails and pedestrian bridges. Mr. Vincent stated the majority of the maintenance would be borne by the department. Most of the roadway improvements, the pedestrian trail and bridges, would be within DelDOT right-of-way, so major maintenance would be run by the department. They had received questions about snow removal. Those were technically part of the DelDOT maintenance program. However, when it came to pedestrian paths and sidewalks, the focus was generally

on the roadways themselves, so in terms of getting a timely response to things like snow removal, that would likely be the City's responsibility.

Ms. Sierer asked if the maintenance included repaving and mowing that would be DelDOT's responsibility. Mr. Vincent said mowing was similar to the snow removal, where there was a rotation that was very sporadic and may be only several times per year. He thought it was very similar to anything to do with homeowners where if they desired to have it maintained and completely cut on a regular basis, that was something that the City would likely have to do as well. He noted this had already been discussed with staff members in the City ahead of this meeting.

Mr. Hamilton asked why the City would not choose to lease the land to DelDOT rather than own it. If the City was going to be responsible for snow removal and mowing, DelDOT was giving the City a park that was not really maintained. He asked if there was any way the City could get funds to compensate City staff for maintaining the space. Mr. Vincent said generally speaking, that was something that municipalities or private residents, homeowners, were responsible for. He was not aware of any instance where DelDOT had been able to provide funding for that type of maintenance. He could check and see if there was an option for that, but right now it was very unlikely that that would be the case.

Mr. Hamilton said DelDOT was going to dig up the utilities and put them all in there. He said he probably asked every road project that was coming before Council this. He believed DelDOT laid a fiber optic network under Route 1. He asked if there was any chance DelDOT would do that along side here. Since there was the potential for fewer cars in the future, he hoped there may be a foundation considered. Mr. Vincent said there was a network being laid under there by the DelDOT traffic personnel, so there would be cameras and intelligent computation with a fiber optic network and there would be camera poles installed so they could view the whole corridor.

Ms. Wallace wanted to reiterate some of the questions and comments that had been raised about the mowing. She received comments from residents about overgrowth along sidewalks on DelDOT roads. If there was a sidewalk, no one could use because there was overgrowth on the sidewalk. She hoped to see improvement in that area. She would like clarification about the pedestrian bridges and the pedestrian walkways and if there was going to be a dedicated bike lane along this whole stretch. Mr. Dougherty said there would be a bicycle-friendly roadway design with a multi-use path that had a 10 foot path with the pedestrian bridges. There would be shoulders that could be used as bike lanes. He believed the general idea was that the all roadway bike facilities were used for more advanced riders, people that were comfortable riding with traffic, whereas the multi-use path was for families or less-experienced riders. There would be a bit of redundancy to accommodate both types.

Ms. Wallace asked that there be a conversation between City staff and DelDOT that the bridges be made walk-your-bike zones. She noted there were problems at certain bridges in the City of Newark. It was a choke point for there to be conflict and she thought it was safest to have bicyclists on pedestrian bridges where there was no place for pedestrians to go if a bicyclist comes flying down, to have those be walk-your-bike zones. She noted there were some areas in town where this may not be necessarily clear who had jurisdiction to designate those zones.

Mr. Markham confirmed DelDOT was asking for easements not any transfer of property. Mr. Vincent said there were a few locations where they did have the right-of-way acquisitions and DelDOT was requesting a donation as well. So there was a mix of TCE, PE and right-of-way.

Mr. Markham asked if DelDOT was asking for the parcels to be donated or just transferred to DelDOT. Mr. Vincent said that was correct.

Mr. Markham asked Mr. Spadafino what the plans for this property were and did any of this alter or stop the plans. He asked if this was park land that they had planned for, or if it was up for grabs. Mr. Spadafino confirmed the area was City property said he believed the parkland area by Dunkin Donuts was an easement and the other other area was just City owned property but not park land. Therefore, there would not be any effect and the benefits of getting the trail and the construction trails would be a great addition to the City trail system, in exchange for the easement and the property transfers.

Mr. Markham asked Public Works for confirmation there were no plans for them to interfere and make life harder. Mr. Coleman said he believed there would be some nice improvements as a result of this. DelDOT was going to incorporate an increase in the diameter of the forced main coming out of Twin Lakes, from two to four inch, which would at least get the pipe in the ground so they could, theoretically, later upgrade the pump station at Twin Lakes to something with less maintenance and headaches.

Mr. Markham asked if there were any private properties that required easements and how did those agreements relate to what DelDOT was offering the City. Ms. Parrett said the entire stretch of the project had easements and fee acquisitions that were required and DelDOT was in active negotiations with the majority of the property owners. They had offers that had already been made on several and more that were going out in the next few days. There was one property that went into Maryland because there was a sidewalk area that impacted their sidewalk and it would be improved for the pedestrians that lived in the apartments. Down both sides of the road, the whole length of the project, there were easements and fee acquisitions DelDOT was doing. Some of them were valued using a waive evaluation, where comparables were used and then established a value in-house. Some of them were done through outside fee appraisals. It was only the City that DelDOT was asking for a donation from, and again, that was for the perceived benefit to the City, by having the trail system in place.

Mr. Clifton said most of his questions had been answered. He asked if a private property owner did not agree to come to the table with DelDOT, would they take the property by eminent domain. Ms. Parrett said DelDOT did have the authority under this project to proceed through eminent domain, if they were not able to reach a successful negotiation.

The Chair opened the discussion to public comment.

John Morgan, District 1, expressed concern about the mixed use of the pedestrian bridges. He asked the exact location of the bridges. Mr. Vincent said one was located at the western end of the project about halfway between McIntire Drive and Otts Chapel Road. The other was all the way at the eastern end of the project, where it tied in to the existing roadway bridge just west of Casho Mill Road. Dr. Morgan asked if they would be low bridges close to ground level. Mr. Vincent said there were currently roadway bridges at each of these locations and the proposed bridges would match the elevations across the branches and would run parallel to Elkton Road. Dr. Morgan noted the existing signage at the Casho Mill Road tunnel under the railroad tracks said, "Cyclists shall dismount before proceeding through the pedestrian tunnel." However, he found cyclists rarely walked their bicycles through there. He suggested a wide bridge with clearly demarcated bicycle lanes, similar one on New Linden Hill Road in Pike Creek.

Mark Deshon, District 5, suggested there was absolutely no difference between a multi-use path running along the edge of the major highway and the bridges it fed into. He believed Dr. Morgan's point was moot. It would not be any more dangerous on the bridge than it would be anywhere along the multi-use path. He appreciated the comments about safety but did not think it was relevant in this case.

The Chair brought the discussion back to the table.

Mr. Spadafino noted the grass mowing along that trail would probably be on a monthly mowing cycle with March and April probably twice a month when the grass was growing rapidly. There would also be snow removal during the winter months. This area would be treated like the Pomeroy and Hall Trails as a major transportation corridor. This would be the first area on the list after the Hall and Pomeroy Trail were completed for snow removal. The maintenance for repaving and bridge maintenance twenty years in the future would be DelDOT's responsibility.

Ms. Sierer thanked all the participants for their presentation and said it was an exciting time for Newark.

7. 2. **ITEMS NOT ON PUBLISHED AGENDA:**
 A. Elected Officials who represent City of Newark residents or utility customers:
 None

8. 2-B. **UNIVERSITY**
 (1) Administration

27:10

Caitlin Olsen, UD Government Relations, said the new off-campus living guides were available. They provided a lot of information. It was online through Stream Links. Contained within were safety tips provided by Newark Police Department. There was some information about the landlord-tenant code. There was a link for people to sign up for InformMe. Additional information was provided for commuters or transfer students as well. Copies of the guide were available around campus. She had copies and would provide them to Mayor & Council

Mr. Clifton thanked Ms. Olsen for providing information he had asked for previously. He asked if he was correctly understanding a recent email he received that the University Courtyard transfer was

still going forward in 2019. Ms. Olsen would check on the date and let Mr. Clifton know. Mr. Clifton believed this was a big issue. He was on Council when the agreement was made with UD and with the change in timeline, he believed over a ten year period it would cost the taxpayers of the City \$770,000 in lost revenue, which was a big deal to him and some others. Ms. Sierer asked Ms. Olsen to provide an update to all of Council on the matter.

Mr. Markham noticed UD had raised their administrative fees this year. He thought one of the concerns about their administrative fees was competition with other universities. He noted that one of the comments that came back when discussing a student fee years ago was that UD did not want to raise the fees because then UD would not be competitive with other colleges. He was asking if this was no longer an argument. He would like UD to consider some type of student fee to help out the City.

9. 2-B-2. STUDENT BODY REPRESENTATIVE: None

10. 2-C. CITY MANAGER:

32:50

- Thanked the Parks and Recreation Department and other staff as well for their work on the Liberty Day Celebration and fireworks. He also thanked UD for letting the City hold the event on their property. He reminded all of the coordination between the City and UD and a lot of the operating departments at UD were involved in the process.

11. 2-D. COUNCIL MEMBERS:

32:21

Mr. Markham:

- Noted the viewing of the fireworks were very nice at the reservoir. Better coordination was needed for parking in the area. He understood every year Parks and Recreation talked to the car dealers but there always seemed to be one that did not get the memo and their lot lights remained on. He asked Parks and Recreation to follow up with all the dealerships next year.

Mr. Clifton: None

Mr. Lawhorn: None

Ms. Wallace: None

Mr. Hamilton:

- Noted a lot of articles were printed about the recent referendum and the issue with LLCs. He would refrain from commenting until further information was received. He was aware the Election Board was meeting soon. The Election Commissioner would also be weighing in on the issues as well.

Ms. Sierer:

- Shared that the PlacesForBikes ranking of Newark was 39th overall nationwide of cities who participated in the assessment and 7th overall among cities with fewer than 100,000 people. Newark also received the four year Bronze level designation from the League of American Bicyclists as a Bicycle-Friendly Community. The League of American Bicyclists did provide BikeNewark and the City with recommendations on how they could obtain the Silver designation by 2022 and the City would strive to reach that goal. She noted the Silver designation would help the City to be a more bicycle and pedestrian-friendly community. She thanked staff for their help on this matter.

12. 2-E. PUBLIC COMMENT:

37:10

Sarah Bucic, Wilmington resident, was glad to see the City of Newark moving on an overall lead paint ban. She noted she and Dr. Roe had submitted comments on that. She wanted to note an entire yard next to the Windy Hills water tower had been remediated, which was excellent. However, it took a lot of convincing to a group of engineers to remove lead, which was a permanent, irreversible neurotoxin, of which there are no safe levels almost two years later.

This made her question whether the City was addressing this issue beyond the one property by taking two additional soil samples on the neighbors' property, which remained unremediated was sufficient enough. She believed no one had been told to have blood lead tests done. She would like to know as she thought other people would, if there would be further inquiry on the issue of the Windy Hills water tower for homeowners to feel safe. The one property that was remediated, she believed his neighbor was never told there was lead paint in the chips that were on his yard. She noted that at least

two additional soil samples that were performed in October of 2017, he was not aware of. She noted there were three small children in that home. She wanted to know if Council was aware of this because she believed if these were their homes and their children lived there and two years later the City was still cleaning their neighbor's yard but not their yard in full hazmat gear, if they would feel safe if that was their neighbor's yard and theoretically, the contamination stopped at the yard line. She provided pictures of what the remediation looked like to provide a visual. She looked forward to an answer regarding whether the City of Newark actually planned on assessing the full area around the Windy Hills water tower or if they felt the two samples without discussion to that homeowner were sufficient, considering a full remediation was required directly next door.

Nick Wasileski, District 3, had provided Council with a handout entitled "Division of Corporations." He noted for the record that the following data was compiled from affidavits of corporations, limited liability companies, non-resident and non-registered property owners that voted in the recent referendum and were obtained from Delaware Online. One corporation cast a single ballot. This entity was a non-profit. Eight beneficial members of LLC or their representatives cast 71 ballots, which averaged approximately nine votes per beneficial owner. The largest number of ballots cast was 31 by a single beneficial owner. 27 non-resident or non-registered property owners cast ballots, and some cast multiple ballots. He noted, for example, a non-resident owner of six properties voted six times. A person who voted for seven LLCs also cast an additional ballot as a non-resident property owner. Twenty-three affidavits were incomplete. In one instance, the affidavit for an LLC was not signed. Other examples of missing information include tax parcel number, address of LLC, and missing City names. In another case, a business entity could not be found on the Delaware Division of Corporations entity search. That document was included in his handout. In other words, no statement of good standing could be obtained to verify its registration and status. Moreover, the entity name did match the parcel number on New Castle County's parcel search.

He said the News Journal reported that the registration of one LLC was canceled two weeks prior to the election. Attached was the Delaware Division of Corporations document of this LLC, which stated "Status Canceled. Failure to pay tax. Status date June 1, 2018," which was prior to the referendum. He believed these two examples raised the question, "Can a business entity that is not registered and not in good standing legally cast a ballot?" He noted it was very possible that these two cases were merely clerical errors, but it did illustrate the complexity of entity voting. Lastly, they could debate the pros and cons of Delaware statutes that permitted voting rights by entity and non-entity property owners. He noted allowing a single beneficial owner of multiple properties to vote multiple time was a bridge too far. He believed good government mandates one person, one vote.

Ms. Wallace said she had heard from other residents as well. She said she did plan on bringing forward something at a future Council meeting for discussion about what ideas or what the Council would like to see happen with City referendum voting. She thought there was some room for improvement. Additionally, she had met with the City Secretary and she wanted to request that the City Secretary bring forward some suggestions of ways that the election process could be improved. Particularly, if Council decided not to move forward with not allowing property owners or LLCs and corporations to vote so Council could address any issues that there may be.

She also wanted to encourage everyone, if they had the time and the inclination, please do offer to serve as a poll worker. There was a real need for poll workers and it used to be a lot easier to fill that role. If residents had the time and the interest, please reach out. She asked Ms. Bensley how interested parties would get in touch with the City Secretary's office to apply. Ms. Bensley noted Ms. Schiano had forms available if there were interested parties at the meeting. The completed forms could be submitted to the City Secretary's office. Ms. Sierer asked Ms. Bensley to provide the livestream viewers the information as well. Ms. Bensley said interested individuals could email citysecretary@newark.de.us or call the office at 302-366-7000.

Lena Thayer, District 5, echoed Mr. Wasileski's statement. She provided a copy of her statement. She noted at the last Council meeting, Mr. Wasileski spoke about a concern with LLC voting during the last referendum. The good news for all of them was that regardless of the current practice, it did not directly impact the outcome of the referendum. The bad news she understood was that once the City Charter stipulated to allow for non-resident voting, under Delaware state law, they were not able to amend the document to revert those rights. She noted that however, the current charter LLC voting was not called out. She believed the interpretation of the charter allowed for voting in this and in the previous referendum. The fact that LLC voting rights were not specifically called out in the current charter granted the opportunity to amend this practice moving forward. She believed looking at the City history and values, they as a community should set the Delaware standard to not allow this practice in the future. She believes Council's charge for the City of Newark listed the residents at the top for a reason. The City

espoused that it valued its people more than any other factor. She thought that by allowing parties to vote multiple times in what many saw as a clandestine manner, set a standard for allowing the community to be driven not by the people, but instead by those with business interests in the community. While they absolutely recognized that the business community greatly helped drive the City's economy, she felt it should never and could not be allowed to be the driving force. LLCs were growing exponentially compared to other business types, not only in Delaware but across the country. She asked if the City wanted to see the day that the elections were solely determined by the business community as opposed to a balanced, fair vote reflective of all stakeholders within Newark. She believed Newark was a community of intelligent people and had watched increasingly over the years that in the interests of business, the ordinary citizen was marginalized on a daily basis. She asked to not take the chance for Newark to continue on that path, but see this referendum vote for what it was, a warning bell. In opportunity to put the people first, she asked that Council review the rules within the current charter and update the document to not only be clear in its intention for LLC voting, but also reflect a one-person, one-vote standard.

Catherine Ciferni, District 2, commented on the multiple voting issues of LLCs. She noted historically, voting and voting access was a fundamental touchstone to the ever-evolving American narrative. From the country's founding to suffragettes getting the right to vote in 1920 and she reminded all it is not even a hundred years with white women getting the right to vote, to the Civil Rights era with 1965 Voting Rights Act, to student protests to roll back voting to the age of eighteen. She believed all of these tumultuous protests were things that they stood on. She believed to sit there and rule and determine that an LLC, whose language was not mentioned in the charter, took precedent over the American narrative was an insult. She felt it was an insult to one person, one vote and to voting ideology. She noted Teddy Roosevelt was credited with the following statement: "A vote is like a rifle in its usefulness. It depends on the character of the user." She asked if they went to a battle with one rifle versus someone with thirty, what was the outcome going to be. She asked Council to reconsider this. She was glad Ms. Wallace was looking into it, and she thanked Council for their time.

John Morgan, District 1, believed it was urgent that the Charter be amended because the way the wording was now, it talked only about a corporation that owned property within the City. It did not have to be taxable property. As far as he could see, if he were renting a small office on Main Street and he owned a computer in the City, he could claim that his corporation owned property within the City and that would give him the right to vote. So he thought the way it was worded was clearly unfortunate. He also believed that although the citizens of Newark may not be able to take away voting rights in a referendum, he was sure the legislature had complete power to revise the Charter that way and this was an important issue that he hoped Council would be looking at soon.

The other issue he wanted to talk about because he would not be at the August 13 meeting was to ask Council to consider the addition of the revision of the rules for Main Street. When reviewing the map, he was concerned with the idea of having only five or six feet of clearance between a sidewalk café and other things that would obstruct someone walking like a building. He said five feet was a short distance and he thought that if the City wanted to have a lot of people working on the Main Street, that was going to get pretty congested. Although it was illegal to ride bicycles on Main Street, he thought the law was almost never enforced. He foresaw there being too much congestion with bicyclists and pedestrians trying to squeeze through narrow five or six foot passageways and he urged Council to think very carefully about that. He understood why owners of restaurants might like to have sidewalk cafes which enable them to accommodate more patrons. He was also concerned about having sidewalk cafes serving alcohol. He thought it was harder for managers of the restaurant to monitor who was drinking and who was not drinking if patrons were outside. He thought those were issues Council should be looking at carefully when this ordinance had its second reading.

Mr. Clifton said with regard to LLCs, the Miami Herald reported, if it was accurate, that the National Conference of State Legislatures said Delaware was just one of three states that allowed citizen towns the authority to let non-resident property owners vote in local elections. He thought that was a pretty important footnote to keep in mind.

13. 3. **APPROVAL OF CONSENT AGENDA:**
 - A. Approval of Special Council Meeting Minutes – June 20, 2018
 - B. Receipt of Council Minutes – June 25, 2018
 - C. Receipt of Planning Commission Minutes – June 5, 2018
 - D. Receipt of Election Board Certification of the Referendum Results – June 21, 2018
 - E. ***First Reading – Bill 18-19 – An Ordinance Amending Chapter 5, Animals, Code of the City of Newark, Delaware, to Address Felonious Cruelty to Animals – *Second Reading – June 23, 2018****

- F. **First Reading – Bill 18-20** – An Ordinance Amending Chapter 32, Zoning, Code of the City of Newark, Delaware, By Allowing Sidewalk Cafes, Patios, Decks, Balconies and Parklets in the Downtown District – **Second Reading – August 13, 2018**

53:26

Ms. Bensley read the consent agenda into the record.

MOTION BY MR. MARKHAM, SECONDED BY MS. WALLACE: TO APPROVE THE CONSENT AGENDA AS RECEIVED.

MOTION PASSED. VOTE: 6 to 0.

Aye – Clifton, Hamilton, Lawhorn, Markham, Sierer, Wallace.

Nay – 0.

Absent – Morehead.

14. 4. **ITEMS NOT FINISHED AT PREVIOUS MEETING:** None
15. 5. **APPOINTMENT TO BOARDS, COMMITTEES AND COMMISSIONS:** None
16. 6. **SPECIAL DEPARTMENTAL REPORTS:**
- A. General Assembly Update and Associated Requests for Council Direction – Lobbyist

54:30

Mr. Armitage thanked Representative Baumbach for all his work during the year. Senator Sokola was not present but both individuals did many things to help the City this year.

SB204, the stormwater regulation bill that acted as the stormwater regulation until DNREC adopted things, and the hotel taxing authority was signed by the governor on the July 2. Middletown and Milford also had legislation pass but it had yet to be signed. There was a lot of work around the PILOT bills but none of them ever moved out of committee.

HB260, the new committee that had been created to manage Grant-In-Aid, never left the Senate Committee. House Substitute 1 for HB360 with House Amendment 2 regarding sexual harassment passed. He asked Mr. Coleman who was handling Human Resources for the City since Mr. Haines' departure. Mr. Coleman asked that Acting Deputy City Manager Mark Farrall, who was handling Human Resources responsibilities for the City, be included as well as himself and Devan Stewart, HR Manager.

HB403, eliminating the notarization requirement for absentee ballot affidavits for municipalities, passed. HB 416, the exemption for nonprofit pools from property taxes made it to the House Ready List. HB480 and SB360 were of concern to DEMEC. One was about the net energy metering for solar as well as the other one that would move rate capping ability from the Public Service Commission to DNREC; neither of those moved forward. There was a lot of confusion in the last couple of days whether or not they were going to move or not. Senator McDowell would say that the whole of what was going to happen changed so fortunately none of them came out of committee. He had promised people that he would get people together this fall and discuss both ideas. When this happened, he would make sure the City Manager was aware of this so Newark people could participate.

He said the minimum wage bill passed the Senate and then passed the House. The Republican caucus in the House was more than irritated that a bill with that much impact was going to pass the last night when it had been really sitting around for the entire two years of the session. So what finally happened was that the House then amended the minimum wage bill, so that there was now a training wage that was \$0.50 less than the \$8.75 that would go into effect January 1, 2019. In October 2019, it would move to \$9.25 an hour.

The outgoing budget was signed by the Governor. Included in there was the UNICITY funding of \$143,000. The bond bill was signed again on July 2. Municipal Street Aid funding increased to \$6 million dollar. CTF increased so every legislator received \$300,000. There was still no luck with the reservoir language. He could not find somebody to unravel that yet. Senator Sharp said it made no difference to him anymore, but he was the one that actually put that in there. Senator Amick's health really did not let him have a conversation with the City about why it was in there. He would keep working on it as they go into the future. Included was \$32,000 for trails in Newark for replacement and additional replacement of computers and police vehicles.

Grant-In-Aid passed and included the restoration of all the fire and EMS. There was an additional \$50,000 put in for each of the three counties for EMS funding.

One of the other things that passed at the end that Council had asked him to try and help was the ban on the use of lead paint in outdoor structures. He said he did a little bit of coaching and helped them with the Governor's office.

The last thing that passed that had some impact on the police department was that municipal police officers that may be killed in the line of duty would also benefit from the state burial benefit. Finally, the last thing he would mention was DEFAC would meet on September 17.

Ms. Sierer opened the discussion to questions from the table.

Ms. Wallace asked if the table was updated. Mr. Armitage said it was updated but he wanted to review it one more time and would send copies of all the bills.

Mr. Clifton asked the definition of a training wage. Mr. Armitage said he believed it was really aimed at teenagers and people that were still on a probationary period. He added the real pushback came from the restaurant association. Ms. Bensley believes the training wage definition was limited to 90 days in the bill. Mr. Armitage said he would include that link in the table so it would be there for them to be able to read that.

Ms. Sierer thanked Mr. Armitage for the session.

17. 9. ORDINANCES FOR SECOND READING & PUBLIC HEARING:

- C. Bill 18-15** – An Ordinance Amending Chapter 7, Building, Code of the City of Newark, Delaware, by Prohibiting the Use of Lead Paint

01:03:00

Ms. Bensley read Bill 18-15 into the record.

MOTION BY MR. MARKHAM, SECONDED BY MR. CLIFTON: THAT THIS BE THE SECOND READING AND PUBLIC HEARING OF BILL 18-15.

MOTION PASSED. VOTE: 6 to 0.

Aye – Clifton, Hamilton, Lawhorn, Markham, Sierer, Wallace.

Nay – 0.

Absent – Morehead.

Mr. Coleman said based on previous discussions held with Council over the last few months, staff brought forward an Ordinance that would restrict the application of lead based paint in the identifiable loophole that was brought to the City's attention by Dr. Roe and Ms. Bucic. Staff attempted to do so in the proposed Ordinance. Staff wanted to keep it simple and in light of feedback received, perhaps a little too simple. Feedback was received from Dr. Roe and Ms. Bucic on the proposed Ordinance and the shortcomings that they identified likely after following the state bill through the process on some ways they believed the proposed Ordinance could be strengthened.

There was now a passed state bill that in certain areas could be duplicative of what the City was trying to do. He did think there was some additional work needed on this proposal since it was introduced based off the feedback. He reached out to Dr. Roe to set up a meeting during the following week assuming this did not get passed this evening to try and fine tune the Ordinance and bring something that would complement the State's Ordinance without overly burdening staff and the residents.

Ms. Sierer opened the discussion to questions from the table.

Ms. Wallace said based on the very thoughtful comments from Ms. Bucic and Dr. Roe she did believe there were some improvements so that they could mirror more what was being done on the state level. Since the proposed changes were substantive, they could not incorporate the changes and vote on them at the current meeting. She thought there should be Council discussion about which of these suggestions Council would like included in an Ordinance or not and then postpone indefinitely the Ordinance that was on the agenda for tonight so that they could bring it back with these changes.

Ms. Sierer was in agreement and asked if there were any objections from the remainder of Council. She asked Ms. Wallace to provide her recommendations on the comments.

Ms. Wallace said one of the recommendations in here was to have the Delaware Division of Health and Social Services do the City's enforcement. Mr. Coleman said he liked the idea, but would like to have a discussion with Mr. Bilodeau about whether DHSS would be able to enforce local rather than just the state regulations.

Ms. Wallace believed that clarification was needed and believed at this point theirs was stronger than what was being proposed. She would see that as being a benefit and she thought that would "keep too many cooks out of the kitchen," and simplify things. In her opinion, it would fit better in the Building Code section. That was her recommendation that they get clarification on that, but she did think if the state would enforce their regulation she would be fine with that.

Additionally, she thought they should add the language about the outdoor structures but she was not sure that would be necessary if the Division of Health and Social Services was going to be doing the enforcement because the State law did have outdoor structures in there. She believed this needed to be clarified as well.

Mr. Coleman said he intended to clarify with Dr. Roe and Ms. Bucic information regarding that there was a 2020 effective date with the state regulations and then there was a second effective date that he did not totally understand which he thought was four years later in 2024. So there was a gap where there was no coverage, so he would like enough language in there that it was enforceable in the interim.

Ms. Wallace said that sounded reasonable and she appreciated the attention to detail in that regard. The only thing she did not see as necessary would be the language about the contracts, but she would defer to Mr. Bilodeau. She thought this was an internal policy as opposed to needing to be in Code. Mr. Coleman said he already started modifying Newark's general provisions that were included in every contract that went out. They were the first section to include this in the general provision, so they would be incorporated in every contract moving forward.

Ms. Wallace said the definitions were helpful, as well as whether or not the City was going to rely on enforcement outside the City or not. Mr. Coleman clarified the intent was to focus on outdoor structures, not paints and things like that.

Mr. Clifton wanted to be on the record saying he agreed with everything Ms. Wallace said and he thought one of the real critical issues was the definition. Without the definition, he thought the enforcement became problematic.

Mr. Markham said one of his concerns on waiting on this was that there was still a hole in the City Code. He asked if there was any harm in passing this Ordinance to fill a hole and then return and amend it to make it better. Mr. Bilodeau did not see a downside to passing it now and amending it later. Mr. Markham said he would like the hole filled. He knew it was not perfect, but otherwise there was that hole. He asked how crossjurisdictional contamination worked. He was not looking for answers at the moment but if someplace in the county spilled over into the City and vice versa how would it be handled. He noted if this was not a concern, that would be a sufficient answer.

Mr. Hamilton thanked Dr. Roe and Ms. Bucic for bringing this up. He noted they had been in attendance repeatedly and had opened Council's eyes. He formally extended an invitation to Ms. Bucic to join the meeting with Mr. Coleman and himself to go over the verbage and make sure they had this right. This was trying to be done as quickly as possible and then they ran into the department of redundancy with the state. They could not make things less than state law but they could tighten things up and make it more. He appreciated their efforts and hoped the collaboration continued in the future.

The Chair opened the discussion to public comment.

Helga Huntley, District 1, advised making the suggested changes at the meeting. She understood the suggestion was made that the changes were substantial; however, she believed she only heard two things suggested that needed to be changed. One was adding definitions, which she did not think was a substantive change that could be added tonight. She also thought only the "lead part" needed to be defined of the definitions. She did not think there was any confusion as to whether the word "paint" was a noun or a verb as was suggested in the comments, so she thought they could skip defining that as a noun. The second part was that there seems to be some suggestion that they should ask the state to

enforce City law. She was confused whether the City would have the authority to even do that. She did not think that they could ask a state agency to enforce local laws, but that was just her understanding of the division of state and local power. She agreed with Mr. Markham's suggestion to make this simple and add the definitions necessary to make this understandable and then pass it and if there were additional tweaks needed to take those up in the future.

John Morgan, District 1, believed the City should have an Ordinance which they could enforce as the state had many other priorities for environmental enforcement. He did not know whether this would fall under DNREC but they were notorious for being slow to enforce much bigger issues than lead paint.

The Chair returned the discussion to the table.

Ms. Wallace believed Mr. Markham raised a good point as she did not think there was any reason to not move forward with this tonight. However, she would ask that Council put a timeline on coming back with changes so it was not left out there hanging. She would like the process to move quickly. She suggested 90 days and asked staff if that would be reasonable. She was not sure she would be in favor of making changes on the dais as there were moving parts. She suggested moving forward with what currently existed and have staff return.

MOTION BY MR. MARKHAM, SECONDED BY MR. CLIFTON: THAT CHAPTER 7, BUILDING, CODE OF THE CITY OF NEWARK, DELAWARE, BE HEREBY AMENDED IN THE FOLLOWING ASPECTS: AMEND SECTION 7-1, GENERAL, BY ADDING THE FOLLOWING UNDERSCORED TEXT IN SUBSECTION H, "LEAD BASED PAINT. APPLICATION OF LEAD BASED PAINT WITHIN THE MUNICIPAL BOUNDARIES OF THE CITY OF NEWARK AND ON ALL MUNICIPAL PROJECTS IS PROHIBITED."

MOTION PASSED. VOTE: 6 to 0.

Aye – Clifton, Hamilton, Lawhorn, Markham, Sierer, Wallace.

Nay – 0.

Absent – Morehead.

(ORDINANCE NO. 18-11)

Ms. Sierer noted Council respectfully requested staff come back in 90 days with the amendment to that bill.

18. 7. RECOMMENDATIONS ON CONTRACTS & BIDS:

- A.** Recommendation to Award RFP No. 18-01 – Newark Community Sustainability Plan

01:16:24

Mr. Brainard said this recommendation was based on the recommendation by the Community Sustainability Planning Steering Committee made at their June 20, 2018 meeting following interviews of the three firms that submitted proposals for RFP 18-01. The chairperson of the committee, Bahareh van Boekhold, was there. Dr. Huntley was a member of the committee, as well as himself and City Planner Mike Fortner. David Athey, from AECOM was also in attendance.

The Chair opened the discussion to questions from the table.

Mr. Markham said a resident asked if a larger community solar park would be considered in this sustainability plan as McKees Solar Park was mentioned in the document. Mr. Brainard said the committee had brought this up at the meetings. He noted AECOM's focus was to structure the focus of where the plan was going to go. However, he reported the committee had not taken any definitive action.

Mr. Markham said the request he received was for a significantly large community solar, basically many times what a person could put on their house, and those people who were completely shaded could buy into that. Maybe the City could sponsor it and people buy into it, and the City got the money back, but just a larger project. Mr. Brainard said the public would have ample opportunity to make their opinions known throughout the process.

The Chair opened the discussion to public comment.

Bahareh van Boekhold, District 1 and Steering Committee Chair, offered that the plan was to put the blueprint and vision of what they wanted to get, where they wanted to see the community. So, for

example, community solar was a project that could be defined as what their vision was for sustainability in the community. If people wanted to see more clean energy and more localized power for the residents, that would be something that the plan would put forward. The grant requirement was to get public feedback, and that was something that they really emphasized. She noted AECOM encouraged public participation. The sustainability plan would come from the public based on what they thought, based on the potential and based on the resources that were out there and they could have this mapping where they wanted to go, what Codes that they needed to change and what kind of resources they needed to have. Mr. Markham says that sounded like that could fit into the proposed plan. Ms. van Boekhold added the grant was available, and it was initially Mr. Fortner who applied for it. She thanked Mr. Fortner and said the City's residents appreciated it.

MOTION BY MR. MARKHAM, SECONDED BY MS. WALLACE: TO AWARD RFP 18-01 TO AECOM IN AN AMOUNT NOT TO EXCEED \$80,000 PROVIDED BY THE DELAWARE SUSTAINABLE COMMUNITIES PLANNING GRANT WITH THE CITY PROVIDING A 20% IN KIND MATCH THROUGH STAFF AND VOLUNTEER TIME.

MOTION PASSED. VOTE: 6 to 0.

Aye – Clifton, Hamilton, Lawhorn, Markham, Sierer, Wallace.

Nay – 0.

Absent – Morehead.

19. 8. FINANCIAL STATEMENT: (Ending May 31, 2018)

01:21:39

Mr. Del Grande reported revenue for the month of May increased \$1 million over the month of April to \$2.3 million. Building permit revenue from the Chemours Building and real estate transfer tax revenue had been strong. Electric sales had been higher than anticipated so far through May. Also, with the stormwater utility for the first year, they were above budget right now, and still looking into that matter. When comparing May year to date to last year, total revenue exceeded 2017 by \$2.7 million. Current performance though did not guarantee where they would be at the end of this year. Utility revenue collectively improved for the month of April.

Electric, sewer, and stormwater were still reflecting a positive variance and water improved slightly over April. Water improved to a \$110,000 shortfall, or 1.2% below revenue projections. Last month, he noted they were about \$10,000 worse than that. So, there was some improvement. In-town sales were down 2.3% in water compared to last year, and out-of-town water sales were down slightly by 0.4%. Expenditures were over \$584,000 over budget this year for the first five months of the year, and \$574,000 out of the \$584,000 was due solely to electric purchases. He noted the weather in January and then again in May had the City purchasing more electric, but they also had revenue to offset that as well.

Department deficits were seasonally related except for Code Enforcement. There were merchant fees to absorb to via permit activity in the month of April and May, which impacted Codes bottom line, but they should be able to cover that shortfall through the end of the year, through other surpluses in other departments or as they progressed on. Fuel prices were declining slightly, but they were up for the majority of the first portion this year compared to last year. Hopefully, it was an anomaly. Collectively, when they offset revenues against expenditures, they were reflecting a net current surplus of \$1.7 million for this year, and assuming everything stayed on track for the remainder of this year. They did have a cash balance of \$32.2 million, which included \$21.7 million in cash reserves and \$10.5 million in operating cash.

The electric regulatory liability carried a credit balance of \$1.4 million. In addition, the Green Energy Fund, had a balance of nearly \$122,000 through the end of May. As Council was aware, they had this account trifurcated for three purposes: community projects, individual grants, and community efficiency projects. To date, there were no impending grant requests, and at the next Council meeting, staff would be coming to Council to request to utilize \$85,000 of these funds to replace the aging HVAC system at the George Wilson Center. He reminded Council this project was approved in the 2018 Capital Improvement Projects using these funds.

Mr. Hamilton asked the sale price of Christina Mill Apartments. Mr. Del Grande said Christina Mill Apartments sold for \$39.3 million in June, and the City would see about \$589,000 in real estate transfer tax revenue from that. Real estate transfer tax was reported a month behind due to the reporting process with the County, and this one transaction would account as more than a third of what they anticipated to bring in this year. He noted this did not happen very frequently so this was a great thing for the City.

Mr. Markham noted the month of June was pretty dry and he asked Mr. Del Grande if water consumption picked up. Mr. Del Grande said he did not have June water revenues available but he was hoping there would be a little rebound and hoped it would continue throughout the summer.

Mr. Markham asked about other expenses on page 11 and the commentary is "Increased due to the City's new stormwater bills which began in 2018." He asked why they did not know the number. Mr. Del Grande said yes and no. He added there was no entity exempt from paying the stormwater utility. They were still going through their own appeals process as they were with other commercial or residential properties. There were also some other outliers being worked on as well with some small parcels here and there that were kind of question marks as to who owned what percentage of what due to some plan leases; so the numbers were subject to change. Mr. Markham asked if the City was appealing its own stormwater bill. Mr. Del Grande said yes.

Mr. Markham said grass cutting was charged at McKees Park and he saw on the Philadelphia news stations, and he believed Temple University had a large solar farm, and they actually were in agreement with a nearby farm to have sheep and goats take care of all the grass underneath it rather than paying a person to go mow that out. He suggested approaching UD and suggesting this option. Mr. Coleman said he had concerns with this suggestion as it was a brownfield and it would have to be an allowable use and he doubted it was, but that Mr. Del Grande and Mr. Coleman would check into this option.

Mr. Clifton asked if the replacement of the George Wilson Center HVAC system was part of the 2018-2022 CIP. Mr. Del Grande said it was. The funding source was from the Green Energy Fund was the \$0.003 cent charge that everyone paid due the state law. Everyone in the state of Delaware paid this fee. That brought in about \$10,000-\$12,000 a month to the City of Newark, which then sat in an account that they had trifurcated into community grant projects to individual grants. Individual customers who wanted solar on their roofs could apply for a grant. The third was for community efficiency projects. He noted as of May, although the account has \$122,000 in it, there was only \$57,000 in the community project account and \$13,000 in the community efficiency account. So he wanted to take a small amount of money out of the grant program to fund this project completely, and then it would be returned as they got through the rest of the year. Mr. Clifton asked when the CIP was approved what was the funding mechanism. Mr. Del Grande said it was the Green Energy Fund and the Conservation Advisory Commission.

Mr. Markham asked if HVAC systems were covered under this grant. Mr. Del Grande said if it was an improvement to the carbon footprint of the building, then it could be used. Mr. Coleman said this one that Council as a legislative body could define based on the feedback they got from DEMEC when they checked. Mr. Del Grande said it would create efficiencies to the building, thereby lowering the kilowatts needed to keep it going. Mr. Markham asked Mr. Del Grande to send him that portion of the Code because he did not recall this being part of the description.

MOTION BY MR. CLIFTON, SECONDED BY MS. WALLACE: TO ACCEPT THE MAY 31, 2018 FINANCIAL REPORT.

MOTION PASSED. VOTE: 6 to 0.

Aye – Clifton, Hamilton, Lawhorn, Markham, Sierer, Wallace.

Nay – 0.

Absent – Morehead.

20. 9-A. BILL 18-13 – AN ORDINANCE AMENDING THE COMPREHENSIVE DEVELOPMENT PLAN BY CHANGING THE DESIGNATION OF PROPERTY LOCATED AT 275 SOUTH MAIN STREET

9-B. BILL 18-14 – AN ORDINANCE AMENDING THE ZONING MAP OF THE CITY OF NEWARK, DELAWARE, BY REZONING FROM BC (GENERAL BUSINESS) TO BB (CENTRAL BUSINESS DISTRICT) 1.09 ACRES LOCATED AT 275 SOUTH MAIN STREET

01:33:00

(Secretary's Note: The public hearing for items 9-A, 9-B, 10-A and 10-B were held simultaneously at this time.)

Ms. Bensley read items 9-A, 9-B, 10-A and 10-B into the record.

MOTION BY MR. CLIFTON, SECONDED BY MS. WALLACE: THAT THIS BE THE PUBLIC HEARING AND SECOND READING FOR THE ABOVE LISTED ITEMS.

MOTION PASSED. VOTE: 6 to 0.

Aye – Clifton, Hamilton, Lawhorn, Markham, Sierer, Wallace.

Nay – 0.

Absent – Morehead.

Michael Hoffman, Esq., Tarabicos Grosso, presented on behalf of the applicant and property owner for the project. He stated this was the proposed redevelopment of the Park and Shop property located across from City Hall. The applicant was seeking a Comprehensive Plan Amendment to change the future land use map. The applicant also proposed to subdivide the northern 1.09-acre piece and rezone that parcel only to BB, Central Business District, from its current BC, General Business District, zoning designation. The applicant also sought major subdivision approval for a mixed use structure and a Special Use Permit to allow residential use above a retail use. Mr. Hoffman said Mr. Robert Wittig and Mr. Tripp Way, the two principles of the property, were present to address any questions. Chris Duke of Becker Morgan Group, the project engineer was present as well.

He noted the project was before Council on March 26, 2018. After some feedback they received from Council members following that meeting, they took some time to go back and try to determine some additional commitments they could make to alleviate some fears related to tenant behavior in the likely event that the residential units were occupied by UD students. They would like to present those additional commitments and answer any additional questions from Council. He noted he reviewed the minutes from the March 26 meeting and he believed they covered the discussion well.

He mentioned the entire property was 4.95 acres and zoned BC, General Business. The applicant was proposing to subdivide and rezone the 1.09 acre northern portion of the property. The bottom level of that new structure would be just a little over 10,000 square feet of commercial and then the second and third floors would be residential, comprised of 12 units with a total of 44 beds. To give Council an example in terms of comparison of scale, this building, as proposed, was noticeably smaller than the current building being constructed that was approved on the other side of the bank which was the South Main Street plaza building.

That building had about 20,000 square feet of commercial space on the first floor and this project was proposing 10,000 square feet. In addition, that building was proposing 36 units and he believed that to be about 120 beds. They were proposing 12 units for 44 beds. That structure was four stories. This proposed structure was three. The footprint would run parallel to Apple Road. This was consistent with the character of the bank building, which had run parallel to Apple Road since about the late 1990s, when it was first constructed. He also wanted to again mention they were excited that they were bringing Jerry's Artarama to the site, which would be located on the end. They would be painting a mural on the side of that structure and the applicant believed this would be a community amenity. They were looking forward to having that all come to fruition.

He said the applicant did make some commitments and some changes to the developer's agreement, trying to focus on what commitments and what steps could they, as the property owners, take to address tenant behavior. He appreciated Mr. Hamilton meeting with the property owners and trying to talk through some of these concerns. The developer's agreement had been amended to include these, but just to note, they were committed to providing the contact information for 24 hour access to the property owner's operating principles and the property manager. They were committed to making sure there were no outdoor gathering locations for residents of the development and just, by way of example, what they meant, the commercial space would not become a residential amenity space. There would not be any outdoor gathering locations.

In addition, they were committed to using commercially reasonable efforts to include language within the residential leases that would address noise violations. They were governed and bound by the Delaware Landlord-Tenant Code, but the Landlord-Tenant Code did allow them to adopt a Code of Regulations. They were committed to looking into specific regulations and measures to address noise concerns. In addition, what was not in the developer's agreement and had been a subsequent conversation, throughout this process, there had been some concern raised by residents and community members as to what was to occur with the balance of the site. The applicant proposed subdividing off just a portion of the mixed use building. That was the only property that was being rezoned. The balance of the property was maintaining its BC zoning. If there were to be any effort to put a residential use on the balance of the property, there would have to be a new rezoning. There would have to be a new Special Use Permit. In addition, they appreciated Mr. Clifton's continued input as they had been discussing other ways to add additional layers of protection for the community. To that end, the applicant was voluntarily proposing a deed restriction on the balance of the property that would restrict against residential use. It would require rezoning, a special use permit and a deed restriction change. He did have additional

language, and he noted this was after the developer's agreement was circulated that would be an amendment incorporating the change.

Ms. Sierer opened the discussion to questions from the table.

Mr. Clifton said this was one 4.5 acre project that had definitely had its day in court. His previous concern in March 2017 when Ms. Wallace had a public meeting was one of a layer of protection for the community. The suggestion he made that night was to subdivide the property, so the other side would remain as is. That was done instantly if he recalled and he commended the applicant for that. He was concerned about what other level of protection they could add that would help. He was not suggesting any of this was the silver bullet that was going to preclude anything in the future. But what it did do he thought was speak to what he hoped would be the thinking of Council if the project went forward, as to what their longer term vision was for the other side, to protect that to be predominantly a community shopping area. He believed this would cover that. As counsel said, this was the third loop that would need to be changed should anything happen. He thought this gave a layer of security to the community and this was what was going to be there for a while. He thanked the applicant for working the details out.

Ms. Wallace said back in March she was quoted in the Newark Post as saying the residents did not want this project. She wanted to clarify, the residents that she had talked to when she was campaigning were not in favor. However, she had since heard from quite a number of residents who were in favor of this project. She noted she was always one to admit when she may be wrong, or may have misspoke or maybe not said the whole thing she should have said. She thanked everyone for reaching out to her since that time, and she noted it was very important for residents to reach out to their Councilperson. She said she took very seriously her charge that she was here to represent her constituents. If she was only hearing from people from one side, she did not know about the other side. She asked for her constituents to not assume that she knew about the other side. There may be times she was in favor of a project but she was hearing from people that they were opposed and she would vote with her residents. She said it was important for her to do her job and for the residents to do their job and let her know where they stand.

She reiterated she had been very pleased with the willingness of these developers to hold public meetings, and to actually make changes in response to those public meetings. She wanted to go on record as saying that she thought that was not something that happened a lot in Newark. She wanted that to be recognized. Additionally she thought it was a coup to get Jerry's Artarama. She was very pleased personally about that. She shopped at Jerry's in Wilmington and she believed that showed a level of commitment to making this a destination for residents as well as bringing in outsiders. Jerry's Artarama was a place that people traveled to shop. She thought that mural, again was another example of making this a place. That was another example where the developers heard them.

Ms. Wallace wanted to know if the City Solicitor had enough time, or would have enough time to have reviewed this amendment and if there was sufficient time to consider this amendment for this proposed deed change and to make sure that he was comfortable with it as presented by the developer's attorney. Mr. Bilodeau said it is very simply written and he is happy with the wording. Ms. Wallace said she felt she had to do her due diligence and ask.

Additionally, Ms. Wallace noted on the third point the developer agreed to address some of the concerns that residents and Council members had to use the commercially reasonable language in a lease. She asked if they would share that with the City and would they be able to provide feedback. She understood it was not necessarily a legally binding request, but just as another effort to show the commitment to really listen to their concerns. It may be as simple as the City says, "Okay this looks great," but there may be some other language that the City could suggest that they may be amenable to. Mr. Hoffman said he believed the developer had been committed to engaging the City, and intended to move forward and continue that commitment. So as far as maintaining a dialogue, answering questions, he thought it went without saying that was something they were continued to be committed to do. Mr. Robert Wittig, RGW, LLC said Mr. Hoffman stated it accurately. Ms. Wallace said that was a reasonable response and a very lawyerly response but reasonable. She did think the developer had shown they would back up what they said.

However, Ms. Wallace noted that she still had many residents that she had heard from who were not crazy about the student apartments, and she felt that she would be remiss if she did not bring that up. However it was not necessarily something that this body could consider, and to say she was not going to accept this project because of the student rentals. She was saying this because she was aware this was an ongoing problem and while this particular project she thought in scope and scale was not the most egregious, they knew it was not. She knew there were some residents who were not pleased with it, but the developer was not trying to cover the whole property with student apartments.

There was an ongoing problem in this City that they were only building apartments for students. They were not building homes for other types of residents. That was a concern and she brought this up even though it was off topic but she thought staff needed to help Council figure out a response to this problem. She noted that Council could not discriminate, but asked what else they could do; what sort of carrots could they offer; and what could they do to encourage developers to build other types of housing. She knew she had said this before, but she believed the City needed to come up with a plan. If that was the Planning Commission coming up with a subcommittee as she knew they had plans for a rental subcommittee. It may be worth its own little subcommittee. She also added the residents were concerned this project would impact their quality of life.

She, however, did hear that people in her district were not necessarily opposed to their being apartments there. She did hear from people that were in favor of this project and she did think the changes that had been made showed a really good faith effort to address those problems. She did not know of any other developers that were willing to give the City their cellphone numbers and have them call with 24/7 access. She believed it was unlikely this would be a problem development.

Mr. Hamilton echoed a lot of what Ms. Wallace said and thanked everyone involved. He noted at the last meeting he left saying he hoped they would be neighborly and work this out, instead of taking another tack. He appreciated the meetings that he had with the developer. They kept all their promises, and were open to suggestions and relayed their plans including bringing in a good tenant, Jerry's Artarama, and helped Council address the concerns. He said he did not mind students living in this town. In fact it helped the City. It was what they could do to guide them to better behavior, as well as their residents, non-students as well. He appreciated the developer listening. He also appreciated the fact that, part of the suggestions came from another developer, who runs his properties in a certain way. He said his main focus since he had been Council was to talk about these things and find good solutions. If everybody worked together they could find better solutions.

Mr. Hamilton thanked Mr. Clifton for working on the deed restriction and thanked the developers for being amenable to them. He did not mind contention if it moved them forward. He did not think it was necessary, but on the other hand, sometimes people shouted at each other and past each other. But he thought when they broke it down and they took a step back and had conversations, they got results. He added there may never be agreement on everything. He thought from conversations the developer plans on their reputations on this.

Mr. Lawhorn wanted to address the comments that Ms. Wallace made because he agreed, they did have primarily only development projects that were targeted around students and they discussed finding a way to encourage developers to build other projects. He thought that broke down to basic supply and demand right now. Before the university announced that they were adding 4,000-6,000 students there was already a huge demand for student housing. So when they heard those numbers, that there was a tremendous demand for student houses. It was just Business 101 that they were going to fill that demand, because it was there. He believed the answer to that was to find ways to build more supply. He noted within the last year since he became involved with Council he recalled the joint Council and Planning Commission meeting that happened months ago, there was a lot of discussion about that and what, the general theme that he thought most people seemed to agree on was that they needed to encourage developing student housing in the downtown. It addressed other issues that he heard from residents in her district, where houses down the street were being turned into student rentals in their neighborhoods. That was not what they wanted.

He believed that some of things that Ms. Gray would bring to Council in the coming months were directed at finding ways to make it easier to fill demand in the areas where they wanted to fill it. As it related to this project, was this an area where they wanted to fill it. He had done his homework to try and understand not just the Comprehensive Development Plan itself, and did it fit and all that, but he went back and looked at discussions in 2012 and 2013. One that stuck out to him was when they renamed South Main Street. He asked why they would rename it South Main Street. Looking at all the commentary was that the City wanted to kind of make it an extension of Main Street and make it a downtown Main Street address, and specifically talked about projects like this was what they wanted to see.

He thought for all those reasons that it really addressed Ms. Wallace's concern. It was just one project, but it addressed that concern and it was the right project for this area. He thought the concerns from residents in that area were legitimate and he thought some Council member said at the last presentation that this was kind of the gold standard of how they should go about working with the community to refine a development project to give the City what it wanted, to give the citizens what they wanted, and the developer what they were looking for. He thought this all came together into this being a good project that they should look at how this was done and look to model that in the future.

As far as resident feedback, this project was the most feedback he had gotten from residents. He said he had three phone calls this morning just regarding this project. 100% of the feedback that he got from residents was, "We want to see this. Currently it is an eyesore. It is an embarrassment to the City as it stands now. We want to see this project go through."

Ms. Sierer thanked the folks at DSM. She said they had worked with the community like nobody else had. They worked together with the developer team and they worked diligently with the community and with all of Council. She was very thankful for that. It was quite impressive and she looked forward to working further with all of them on other projects in the community. She thought the residents should be thankful for it as well because the residents were not necessarily as connected to the significant communication that went on between developers and staff and Council. She encouraged all of those folks sitting out here that were for or against this project, to really be thankful the City had worked with a group of people that were significant contributors to the community in a lot of ways. She believed they cared, and she thought that had shown through.

Ms. Sierer agreed with Ms. Wallace. She knew the Planning Commission was working on a lot of things, but she thought it would be good for staff to do some research. There were many cities that were doing incentives for other types of development and targeted development and maybe that was something they could look at.

The Chair opened the discussion to public comment.

Carol McKelvey, District 4, wanted to mention that the Planning Commission voted in favor of this seven to zero. They were in favor of it. Jeremy Firestone was the member for the District 4 residents, and at the Planning Commission he said that, "This is such a large improvement over the Wawa." He wanted to thank the developer also for working with neighbors. He said, "Some of the neighbors did not want the drive-through, and DSM responded to them and reconfigured out the plans so that there would be no drive through." He was so impressed with the developer's commitment to trying to be innovative in working with the neighborhood and when he suggested things about solar, they listened to him and about more bicycle stands, they listened. He also said it is a model and it was wonderful to hear Council members respond to the way DSM was behaving. She noted she lived on Winslow Road, and she was very involved five years ago in not wanting a Wawa at this location. Because of that she met a lot of her neighbors who she had never known before, and became friends. When this project was not accepted, they said to her, "What's wrong? What's going on down there?" And she said, "Well it is complicated. Everybody wants to do the best thing they can." They said, "This is a good suggestion. We really should go along with it. We should try to accept something before another project is offered we do not want." Residents did not want the Wawa with 12 gas pumps. She sent a letter to all of Council listing the 22 people in her neighborhood who very strongly were in favor of this project. She wrote a letter, and in it she said, "We recognize that when you do not own a property, and have no financial stake in it, you can idealize all kinds of manifestations that might suit your dreams, but the reality is that the owners, DSM, have property rights, and a financial stake, protected by law, in acting as a good neighbor, they should set an example for other developments, developers, and they have changed things when it was feasible and that we were very pleased with the project they have come up with."

William Wersinger, 101 Apple Road, the residential zoned property adjacent to Louviers Federal Credit Union. He said he lived across the street from the old Eagle Diner, and now the M & T Bank building located in the Park N Shop. He asked Council to deny the DSM Commercial Park N Shop Apartment Plan this evening because he was concerned about the quality of residential neighborhood life in Newark. He had distributed handouts for Council to review and help visualize what development had done to 101 Apple Road over the years. (entered into the record). He believed this decision would impact the legacy they would leave on the City of Newark if they voted to approve the plan.

He noted in 2007 his house used to be in an open space until it was moved in 1973 to the current location. In 2012 there were drastic changes to the street scape. A developer put a bank drive-thru teller lane approximately 20 feet from his bedroom windows, and to make matters worse, the City allowed HVAC systems to be placed within the drive-thru, which created an echo chamber for the HVAC equipment, and parking lot lights adjacent to his living and sleeping space. On the bright side of the Louviers project, Council recognized the proximity to 101 Apple Road, and only approved the bank's development plan because it was not a 24-hour business and only operated on banking hours during the day, and therefore would not impede upon the residents of 101 Apple Road.

However, he noted using an aerial view of 101 Apple Road showing the proximity of the existing M&T Bank. He noted if a new building was constructed, then the building would be closer to their home, and meanwhile businesses that would be open 24 hours day with two levels of student apartments to

support those businesses. Lastly, DSM Commercial had not specifically addressed with him the impact of the retail entrances and patios, the lighted signs facing their home, how they would let students move in and out of the apartments. He asked when students dumped their furniture and stuff on move-out day, where was it going to be placed. He asked how the Park N Shop was going to protect them from dumpster-divers. He asked where the students were going to park. He believed the amount of noise, dust, and traffic, and risk to personal safety to pedestrians and bicyclists created would be overwhelming, and impacts to the residential community would be significant, year after year.

He presented a slide showing the City of Newark's attempt to create a natural pine barrier between the residential and business districts and an additional slide showing the placement of a three-story retail apartment building in front of their home. If Council approved this rezoning request, then it should be prepared to approve a future rezoning request of 101 Apple Road from residential to multi-family. They would create a barrier of townhouses, four to six, on their street, that would nicely transition between commercial, apartments, townhouses, and then single family homes.

He said, in closing, this was about people versus money. DSM Commercial made \$2 million in revenue in 2017, and they did over \$100 million in real estate transactions since their inception in 2012. He asked Council to please remember that zoning was an exercise of police power, which meant the government's right to impose regulations to protect public health, safety and well being. He was asking for Council to use their police powers and vote no on this project.

Mr. Clifton asked if there was a gas station and a Friendly's restaurant in 2007. Mr. Wersinger said that was correct and their house was originally located on that corner and moved in 1973 to make room for the Arco gas station.

John Morgan, District 1, lived about a mile from this proposed development, so he did not have a direct stake in it the way Mr. Wersinger did, but he did have thoughts. He could understand the concerns of some of the residents. He believed they were concerned not just about behavior that might take place on this property, in terms of noisiness. He asked what type of noise took place in District 4, along Winslow Road or Sunset Road, when there were lots of immature undergraduates late at night, perhaps in an inebriated state, walking along those streets, especially when they were going to have a higher concentration of them now with the proposed new dorms on the southern part of South College Avenue where there was going to be a new building. He thought the attempt could be made to at least try to keep some of that under control by having the developer rent to mature students. He said when he was a graduate student living in a fraternity house in Berkeley, California, which was probably not more than 15 feet from an apartment building inhabited mainly by elderly people and there never were any problems, because they were serious graduate students. There was a developer in this town, Mr. Prettyman, who routinely required applicants to provide a transcript. He believed if they did not have a pretty good grade point average, he did not rent to them. He urged the developer to consider doing that and encouraged renting to graduate students.

He would say that one of the things that could be controlled was the number of bedrooms per unit. If they had a unit with four bedrooms, it would either be rented to a very large family with four or five kids, or more likely, four undergraduates. He thought a small number of bedrooms per unit would help them control that. He thought if a developer put in triple pane windows, it would make it more attractive to upscale tenants because it would be less noisy. He suggested there were some activities in the southern part of the property which certainly did lead to some issues. For example, D.P. Dough had a sign out front that said it was open "crazy late," which he thought meant 3:00 a.m.

Mark DeShon, District 5, asked if the developer was considering adding enough bike racks to the commercial area, as well as the building where the apartments were going to be. Mr. Hoffman said the developer would go through the Construction Improvement Plan and intended to look at where they could provide the code-required bike racks throughout the site, but a site had yet to be determined. Mr. DeShon said his only concern was, because of this location being around neighborhoods, that they try to encourage more and more people to get there with two wheels instead of gas burning vehicles.

Pete Robloff, small business owner in Newark and a resident of Bear, Delaware, was present to speak on behalf of his experience with DSM when they did a development project outside his neighborhood. He was the president of the association for Rolling Meadows and he was one of the head folks on the ad-hoc council that got put together when they wanted to build a big development project outside of his neighborhood, that they originally wanted to fight. When they talked to the developers, basically they were fully prepared to get it shut down. They had other things shut down at that property over 30 years. They were very proud of themselves for getting a lot of stuff shut down.

They went in very angry and yelling and screaming, and DSM was very calm and relaxed, and said, "if you just look for a second, we will answer your questions." It was unexpected for them because they did not act like the previous developers they had dealt with. He believed Council had realized the same thing. In their project, the developers made significant changes to make the project very palatable for the neighbors. They went from being against the project to everybody in the communities surrounding, which was probably six different communities that were originally against it, to almost every single person in the communities being for the projects that they did.

They found DSM to be extremely accountable. If they said they were going to do something, they did it. They had gone well above and beyond budgets to make sure that they could meet concerns that they had. They had moved roads, added trees, changed facades. They did a whole lot of things to make sure that they were bringing the area up. Long story short, they had a nice development property in their area, which was going to happen eventually. They could not stop progress. They believed they got the best thing they possibly could get and they got some really great neighbors out of it. They kept their properties really well maintained. If they drive around Delaware and look at their different properties, they are all extremely clean and well taken care of. A lot of times they would see the owners on site picking up trash and dealing with little kind of small things because they cared about the properties. They were Delaware people, they cared about Delawareans and he thought Newark would be nuts to not green-light this project to go forward. He thought it was going to improve Newark for sure.

Jean White, District 1, said she spoke against this aspect of the development at the Planning Commission and also at the Council meeting a few months ago. She felt compelled for her own feelings to speak again against the apartments that were going to be put in. She said supposed these developers, or another developer, came to put a restaurant where the Wilmington Trust old bank was and were not going to put any apartments there. She asked if they thought the people all around the area who had been saying, "No, we want apartments up there," would not be happy with just having a restaurant. She said that would not have been the case.

She said she opposed it for two reasons. First, it was a balance, from her point of view. The rest of the buildings were basically one story, but it sort of alternated up and down, and they could say it was like two stories, but it was basically like one and a half stories. A two story building could be constructed on that side and there was an imbalance just sort of from an architectural artistic point of view. But more importantly, she opposed putting the apartments there. She did not think it was a good idea to have any residents, but particularly students living there. The point was made that when they were putting four bedrooms in one apartment, clearly that was who it was for.

She pointed out that Council has the right to vote against the rezoning. This was not a by right thing. It was not already zoned that way. If a developer came in and the property was already zoned that way, then Council must vote it. But changing it from BC that one acre plus section to BB took the Council to vote that.

She also noted had she been at the meetings when the project up the street was brought to Council, she would have vehemently opposed the height of that. Every time she saw it, she believes it was out of scale for everything else and she believed a number of other people felt that.

Gene Lara, 101 Apple Road, appreciates that there had been a communication exchange, listening and exchange of ideas. He believed the immediate area was a pristine neighborhood where there was a great deal of pride of ownership. He believed there was a constant effort on the part of many people to keep the integrity of the neighborhood. There were special parking restrictions, and it was a special place in which to reside. He said his property was literally being sandwiched by student housing and he thought that was a detriment to the residents who lived in the area. The people who had been sustaining the area, the same people who protested the Wawa. He thought there was an impact that needed to be considered about the types of residents that would be willing to move into the area. There was an increase in the amount of litter that is found in their yards. He believed the types of housing being provided needed to be considered in terms of the future of the City and the beauty of the neighborhood that these types of developments were impacting. He believed a lot of residents were concerned about the quality of life and believed Council had to think about where they were going to draw the line for the future and look at the greater good.

Lena Thayer, District 5, said she attended the joint commission meeting as well and she said she was really excited by it because a lot of people at the table had many of the same thoughts and ideas as to what they want the future to look like. There were mixed buildings like this and having mixed use facilities. Her personal issue with this specific project was the stacking of the deck of 10 four-bedroom units. She understood that made the developer the most amount of money and she wanted them to make

money, but it was definitive that 10 four-bedroom units was four students, and four undergraduate students. Graduate students were probably more of a one or two bedroom with the same thing for young professionals. A young family or retirees, and she knew the argument was made that retirees did not really like stairs, but she knew plenty of retirees that could out step her. She would like to see the community move forward in a way that did not stack buildings so much just for students. There was high demand for students, but there was also high demand for retirees and adjunct professors who were going to need to come in to teach those students, for tenured professors, and for young families. She believed they needed to see buildings that reflected multiple generations, and multiple types of residents.

The item was returned to table for further discussion.

Ms. Wallace shared this had been very difficult for her as a councilperson and had been one of the most difficult development projects that she had been faced with. She was very sensitive to some of the comments made tonight from residents who lived nearby. However, to a certain extent, Council's hands were tied in regard to this property. The Comprehensive Development Plan did say that this property was recommended for, and all the way down to West Park Place, was suitable for mixed use. While mixed use could be interpreted many different ways by developers, it was not. It was interpreted as retail on the bottom and student apartments on the top. She did not think the current Code, and other laws, allowed them to have a say, as the City, if they were going to allow apartments, they could not say it was going to be one particular type of apartments. The overwhelming majority of comments that she received from her District 3 residents who were opposed to this project, were about the student apartments, particularly. That was something they could not say, no student apartments, yes if they were targeting families. She wished it were different, but it was not. She believed it got into a gray area as being interpreted as age discrimination. Moving forward, they had to figure out a way to try to encourage developers to come up with something else. Mixed use did not necessarily have to be retail on the bottom and student apartments on the top. She thought there had been some comments made here by other Council members that they had an interest in the City bringing forth some suggestions. She thought this project, while it was not perfect, it was better than it could be and she did not mean the reference to Wawa. The developers had been overwhelmingly willing to work with Council and with residents. She thought that in and of itself was something they should acknowledge as a benefit.

Mr. Hamilton said sometimes there was a whole bunch of information that they tried to process and then put through. He met with Ms. Gray last week. He wanted to say that in the future the City was going to work very hard on resolving some of the housing needs in this City. There was an imbalance. He said the concept of keeping students just downtown was ridiculous, because there were some people that wanted to live downtown that were not students. The other thing that was mentioned in the audience was move-out and move-in day. That was a Newark tradition, not necessarily a good one, in speaking with developers and they were talking about staggering their leases and actually having management there the day of their move-outs. So that was another example of some of the conversation, some of the objections that they had that had been answered. He appreciated all the comments on both sides, and on every side. He believed that decisions that were made four or five years ago the City was not necessarily stuck with. They could be changed and adapted. That involved getting everybody involved. That involved having their voices heard and designing the City the way that they wanted. The City had a lot of meetings where people did not show up. He noted this was their town and people needed to speak out.

Ms. Sierer reminded Council they would be voting on items 9A and 9B together.

Mr. Clifton asked if this was an appropriate time to introduce the amendments to the subdivision agreement and the resolution. Ms. Sierer recommended doing that at the time Council voted on the subdivision agreement. Mr. Bilodeau said that was fine.

MOTION BY MS. WALLACE, SECONDED BY MR. CLIFTON: THAT COUNCIL APPROVE BILL 18-13, AN ORDINANCE AMENDING THE COMPREHENSIVE DEVELOPMENT PLAN BY CHANGING THE DESIGNATION OF THE PROPERTY LOCATED AT 275 SOUTH MAIN STREET, AS WELL AS BILL 18-14, AN ORDINANCE AMENDING THE ZONING MAP OF THE CITY OF NEWARK, DELAWARE BY REZONING FROM BC, GENERAL BUSINESS, TO BB, CENTRAL BUSINESS DISTRICT, 1.09 ACRES LOCATED AT 275 SOUTH MAIN STREET.

Ms. Sierer reminded Council they would be voting individually, and they should state the reason very clearly as to why they were voting the way they were voting.

Mr. Clifton said he planned on supporting both. He believed it did fit the mold for the area. He thought it was something that was not going to be a detriment to the community. He thought it was actually an improvement for the community, and for those reasons, he planned on supporting this. Mr.

Bilodeau asked if Mr. Clifton would say it was in accord with the Comprehensive Development Plan. Mr. Clifton said he would agree it was in accordance with the Comprehensive Land Use Plan for the aforementioned reasons.

Mr. Markham said he would support this and would vote for the rezoning based on the reasons stated in the Planning Department's report, and because the proposed use did not conflict with the development pattern in the area, and because the plan did not conflict with Comprehensive Development Plan V.

Ms. Wallace said she would be supporting both of these for the reasons stated by Mr. Markham.

Mr. Hamilton said he would support both of these for the reasons stated by Mr. Markham.

Mr. Lawhorn said he would also be supporting both of these for the reasons stated by Mr. Markham.

Ms. Sierer said she would also be supporting items 9A and 9B for reasons stated by Mr. Markham.

MOTION PASSED. VOTE: 6 to 0.

Aye – Clifton, Hamilton, Lawhorn, Markham, Sierer, Wallace.

Nay – 0.

Absent – Morehead.

(ORDINANCE NO. 18-12 AND ORDINANCE NO. 18-13)

21. 10. RECOMMENDATIONS FROM THE PLANNING COMMISSION AND/OR PLANNING & DEVELOPMENT DEPARTMENT:

- B.** Request of RGW, LLC for a Special Use Permit for 12 Apartments as Part of the Proposed Major Subdivision Plan Known as the Park 'N Shop at the Property Located at 275 South Main Street

02:37:04

(Secretary's Note: The public hearing for this item was held under #20.)

Ms. Sierer said the second vote would be on Item 10B which was the Special Use Permit.

MOTION BY MS. WALLACE, SECONDED BY MR. MARKHAM: THAT COUNCIL APPROVE THE REQUEST OF RGW, LLC FOR THE SPECIAL USE PERMIT FOR 12 APARTMENTS AS PART OF THE PROPOSED MAJOR SUBDIVISION PLAN KNOWN AS THE PARK 'N SHOP AT THE PROPERTY LOCATED AT 275 SOUTH MAIN STREET.

Mr. Clifton said he would be supporting it affirmatively because it did not adversely affect the health or safety of persons working or residing within the City of Newark borders. It was also not detrimental to public welfare, injurious to property improvements within the City of Newark boundaries or within a one mile radius of City of Newark boundaries within the State of Delaware.

Mr. Markham said he would also be supporting the Special Use Permit based on the reasons stated by Mr. Clifton and also because it was not in conflict with the purpose of the Comprehensive Development plan of the City.

Ms. Wallace said she would be supporting the Special Use Permit for reasons stated by Messrs. Clifton and Markham.

Mr. Hamilton said he would be supporting the Special Use Permit for reasons stated previously by Messrs. Markham and Clifton.

Mr. Lawhorn would also be supporting this for the reasons stated previously by Mr. Markham.

Ms. Sierer said she would also support this Special Use Permit for reasons stated by Mr. Markham.

MOTION PASSED. VOTE: 6 to 0.

Aye – Clifton, Hamilton, Lawhorn, Markham, Sierer, Wallace.

Nay – 0.
Absent – Morehead.

22. **10-A. REQUEST OF RGW, LLC FOR A MAJOR SUBDIVISION IN ORDER TO DEMOLISH AN EXISTING 2,150 SQUARE FOOT VACANT STRUCTURE AND 6,400 SQUARE FEET OF THE EXISTING SHOPPING CENTER AND CONSTRUCT A MIXED USE BUILDING WITH 10,600 SQUARE FEET OF RETAIL SPACE ON THE FIRST FLOOR AND 10 FOUR-BEDROOM AND 2 TWO-BEDROOM APARTMENTS FOR A TOTAL OF 12 APARTMENTS ON THE SECOND AND THIRD FLOORS AND ASSOCIATED PARKING ON 4.95 ACRES AT THE PROPERTY KNOWN AS THE PARK ‘N’ SHOP LOCATED AT 275 SOUTH MAIN STREET**
-

02:39:34

(Secretary’s Note: The public hearing for this item was held under #20.)

Ms. Sierer said she would entertain a motion by Mr. Clifton for an amendment on Item 10-A.

Mr. Clifton said Mr. Bilodeau said the subdivision agreement and the resolution could be done with one vote.

MOTION BY MR. CLIFTON, SECONDED BY MS. WALLACE: TO CHANGE THE WORDING OF THE SECOND PARAGRAPH WHERE IT SAYS A “DEED RESTRICTION” BY ADDING AN “S” TO MAKE IT “DEED RESTRICTIONS” AND ADDING TO THAT PARAGRAPH, “THE DEVELOPER VOLUNTARILY AGREES TO PROVIDE A DEED RESTRICTION PROHIBITING RESIDENTIAL USE ON THE 3.86 ACRE PARCEL RETAINING THE BC (GENERAL BUSINESS) ZONING DESIGNATION” AS WELL ON THE MAJOR SUBDIVISION RESOLUTION ON LINE E, THE FIRST LINE OF THE SECOND PARAGRAPH AND ADD AN “S” TO THE WORD “RESTRICTION” MAKING “RESTRICTIONS” AND ADD TO THE SECOND PARAGRAPH “THE DEVELOPER VOLUNTARILY AGREES TO PROVIDE A DEED RESTRICTION PROHIBITING RESIDENTIAL USE ON THE 3.86 ACRE PARCEL RETAINING THE DC GENERAL BUSINESS ZONING DESIGNATION.”

MOTION PASSED. VOTE: 6 to 0.

Aye – Clifton, Hamilton, Lawhorn, Markham, Sierer, Wallace.
Nay – 0.
Absent – Morehead.

MOTION BY MR. CLIFTON, SECONDED BY MS. WALLACE: TO APPROVE THE AGREEMENT AND RESOLUTION AS AMENDED

MOTION PASSED. VOTE: 6 to 0.

Aye – Clifton, Hamilton, Lawhorn, Markham, Sierer, Wallace.
Nay – 0.
Absent – Morehead.

(RESOLUTION NO. 18-Q)

23. **9-D. BILL 18-16 – AN ORDINANCE AMENDING CHAPTER 20, MOTOR VEHICLES, CODE OF THE CITY OF NEWARK, DELAWARE, BY MAKING MARGARET STREET ONE WAY NORTHEASTBOUND FROM EAST CLEVELAND AVENUE TO ANNABELLE STREET**
-

02:43:20

MOTION BY MR. CLIFTON, SECONDED BY MS. WALLACE: THAT THIS BE THE PUBLIC HEARING AND SECOND READING FOR BILL 18-16

Mr. Coleman said the proposed bill was effectually one of the recommendations of the Cleveland Avenue Task Force that was to convert Margaret Street to one way in, in conjunction with the installation of a new traffic signal at Creek View Drive, which had been installed by DelDOT recently. Matt Buckley was present representing DelDOT if they had any technical questions about the change, but essentially it was exactly what they had proposed to the Cleveland Avenue Task Force. This would allow them to reallocate time from the Margaret Street leg to the other legs and permit right turns on red heading westbound on Cleveland Avenue to run concurrent with the other phases, which they currently were not.

Mr. Markham said he wanted follow up to make sure this really worked. He wanted to see statistics starting in September through December. Mr. Coleman said the restriping associated with the

lane diet on the East Cleveland Avenue section, the four lane section was scheduled to happen likely later this summer; he thought that was the most recent agreement that he got from DelDOT on that subject. The hope was to combine the analysis. Mr. Buckley said it had been discussed several times over the past several years the availability of loop detectors and other traffic counters that were out on Cleveland Avenue, so that was definitely something that they would provide and analyze, and they were equally as excited to see what the overall improvement was. He asked them to keep in mind right now that because Creek View and Christopher Lane and Margaret Street had two access points and two signalized access points. At Creek View right now, from a side street that did seem under utilized. So, once they eliminated Margaret Street and converted it to one way northeast, they would see traffic pick up in front of Timothy's. Based on the analysis that they looked at thus far, they believed they would be able to process about a 100 to 150 more cars up and down Cleveland Avenue each hour as a result of just eliminating that signal phase from Margaret Street.

Mr. Markham said his only request was if they were going to do it, let them prove it. Mr. Buckley said they would follow up, not only from a vehicular standpoint, in terms of how much through put but look at bicycle and pedestrian usage, and most importantly, safety along the corridor.

Mr. Markham asked how they coordinated the new light with the light at Cleveland, and made sure it did not turn red when it did not need to. He thought an adjustment may be needed. Mr. Buckley said that was the reality of putting a traffic signal on a two lane roadway with no turn pockets. This was discussed thoroughly with the task force. Right now, there was vehicle detection that unfortunately because there was a single lane coming across the bridge south bound on Paper Mill Road, it would pick up through traffic and left turn traffic at the same time. So the way of minimizing those false calls or those ghost green lights, was to run it in a coordinated manner with respect to the larger intersection along Cleveland Avenue. Right now they were not coordinating the traffic signal along Paper Mill Road at Old Paper Mill Road. If the City requested that, they would look into that. It would run on the same longer coordinated cycling, meaning the delays leaving the reservoir and Old Paper Mill Road would be much longer. Mr. Markham said he was suggesting Creek View and Cleveland. They could start there, which was what it sounded like DelDOT was going to do anyway.

Mark Deshon, District 5, said as Chair of BikeNewark, they were in favor of this because it was part and parcel of what was painstakingly gone over at the Cleveland Avenue Improvements Task Force.

MOTION BY MR. MARKHAM, SECONDED BY MS. WALLACE: TO AMEND CHAPTER 20, SECTION 20-212, ONE WAY STREETS, BY ADDING THE UNDERSCORED TEXT IN THE TABLE AS FOLLOWS: "MARGARET STREET, CLEVELAND AVENUE TO ANNABELLE STREET, NORTHEAST BOUND IN THE DIRECTION OF TRAFFIC MOVEMENT."

MOTION PASSED. VOTE: 6 to 0.

Aye – Clifton, Hamilton, Lawhorn, Markham, Sierer, Wallace.

Nay – 0.

Absent – Morehead.

(ORDINANCE NO. 18-14)

24. 9-E. BILL 18-17 – AN ORDINANCE AMENDING CHAPTER 20, MOTOR VEHICLES, CODE OF THE CITY OF NEWARK, DELAWARE, BY MAKING AMSTEL AVENUE ONE WAY EASTBOUND FROM ORCHARD ROAD TO SOUTH COLLEGE AND REMOVING PARKING ON SOUTH COLLEGE AVENUE

02:49:41

MOTION BY MR. CLIFTON, SECONDED BY MS. WALLACE: THIS BE THE PUBLIC HEARING AND SECOND READING FOR BILL 18-17

Lt. Aniunas presented the bill, which was based on an April 17 Traffic Committee meeting recommendation. He reported due to parking on South College Avenue interfering with the bike lane, it was proposed that those parking meters be removed and Amstel Ave become one way from Orchard to South College Avenue. Staff met with the University on this and realized that there would be some employees impacted that were on the Amstel Avenue lot. However, they felt because the two intersections at Kent Way and Amstel Avenue on South College Avenue were controlled by traffic lights, that those people could then just make a right out of there and come down Kent Way instead of making a left on Amstel, and resume their way back onto Amstel towards Elkton Road. The recommendation of the Traffic Committee was unanimous.

Mr. Hamilton asked how much money did the City make on the parking meters along South College. Mr. Coleman said staff believed they could actually pick up two to three parking meters with this change. He might be off by a space or two, but he thought there were either 15 or 16 along South College Avenue and it would increase to 15-18. They were some of the higher occupancy meters so the occupancy on South College was a little higher than it was on Amstel. He would estimate \$4,000. There was not as much revenue generated from the lots. Mr. Hamilton confirmed it would be a loop down Amstel and back up Kent Way with parking on both sides of the street and South College would be a lot more bike friendly.

Ms. Wallace said taking the meters away was a no brainer and they definitely could improve biking in that area. That was something that she had heard about from people. However, she was not 100% sold on making Amstel one way and adding meters there. Obviously she hated to lose revenue of any kind, but she thought they were potentially leading to other problems. She asked if this proposal being the main reason for changing Amstel Avenue was to not lose the parking revenue or was there some additional benefit that City staff saw, because she did not see any other benefit besides replacing the meters that were being lost. Mr. Coleman said the primary goal was to prevent a loss in revenue and when they realized they could actually pick up a couple spaces, it appeared to be a win-win. The traffic worked okay on Kent Way. UD had some concerns about people going down Kent Way and turning left instead of turning right to get to South Main. He thought signage could be put up to assist drivers saying South Main right towards Amstel and send them out towards Amstel Avenue. In working with the Friends of Newark Streets, they had put in for a pilot for one of the traffic circles on Orchard Avenue at Winslow. He thought the feedback from the community was strong that they liked it, and they wanted to move forward with doing a larger pilot of four. He thought if they ended up with those in place, it would certainly deter people from turning left and driving the gauntlet through the neighborhood to get through. Most importantly, none of this was irreversible. It was just some paint and moving meters, and buying two or three more. Ms. Wallace said she was not sold on this. While it was not her district, she did know a lot of folks over there, and they already had concerns about traffic through the neighborhood. She did not think it was enough of a benefit for making Amstel one way.

Mr. Markham said the hope was to stop the blocking of the bike lane on South College. Mr. Coleman said yes. Mr. Markham asked if there was any conversation on traffic calming, because when they removed parked cars along the roads, traffic speed actually picked up. Lt. Aniunas did not recall it being discussed. Mr. Coleman agreed that when parking was eliminated on a road, speeds typically increased. He noted it was hard to say what the effect was. They had tried to quantify that effect a few times on Cleveland Avenue and they discussed around one to two miles an hour was generally going to be accepted for that. But most of South College Avenue had no parking now, it was just the fifteen spaces near the library, and that was immediately adjacent to the traffic signal at Kent Way so there was a lot of stopping with the signal anyway. It was hard to say what effect it would have directly.

Mr. Markham asked if the City responded to UD's request for a traffic study. Mr. Coleman said that staff discussed how they would even do a traffic study on this one, and they had baseline data for the number of vehicles that were heading down Orchard towards Winslow from when they did the traffic circle study last fall. So they had two weeks of data collection from traffic counts. They could use that as a baseline and do additional traffic counts. Ideally, they would like to get these changes through before the students were back, be able to do subsequent collection on Orchard, and if they noticed a significant increase, or an increase that was driving complaints about what it was before, then they could look into other counter measures. He noted there were ultimately between 100 to 150 cars in the parking lots here that would now go out Kent Way if they wanted to go to South Main and were going to South College. There may be 75 to 80 cars a day probably, maybe a little more than that. It would not be a huge number that were going to be routed that way that would not be going that way already.

Mr. Markham suggested trying this for a year and come June if they were not seeing a benefit, this could be changed. He asked the cost to do this. Mr. Coleman said absolutely and noted a study to analyze would cost money so they proposed a real experiment and see what happened. It was not a safety issue, just a mild inconvenience and then they could roll it back if they had to.

Mr. Lawhorn believed it was important that they try to make South College more bikeable from downtown all the way to ultimately to the new train station. This was a small improvement in an effort to do that. As far as the drive through, he went down and took that drive just to see what impact it would have for the folks coming out of that lot who would no longer be able to turn left, and it was simple: right on South College then on Kent Way which did not appear to really be a residential street. He thought it made sense to put the meters back on Amstel to maintain that revenue, and they actually got to pick up a few spots. And not just revenue, but they were always talking about parking and they needed spots. He did support returning if it did not work.

The Chair opened the discussion to public comment.

Mark Deshon, District 5, was speaking on behalf of BikeNewark and they thought this was a tremendous idea that the City had come up with, and supported it wholeheartedly. One of the things that had not been said, and he thought that maybe Dr. Morgan could speak to this as well, was that this would not eliminate but should help reduce some of the bicycle and pedestrian conflicts along the sidewalk that this created when they had a blockage of a bike lane. The bikers either had to go out into traffic or go on the sidewalk, and that sidewalk was really narrow. He was hoping that this was one small piece of a much larger set of improvements that they could make to that whole North-South Corridor which was probably the most important North-South Corridor they had in the City. He would appreciate it if UD would do a little bit more study about perhaps making the sidewalks a little bit wider along that corridor too. That would also help safety-wise. But they certainly thanked the City for coming up with this idea and they wholeheartedly supported it.

John Morgan, District 1, said the removal of the parking meters along South College Avenue was something that had been discussed for a couple of years now. He strongly supported that. He pointed out that right across the street from the library there was a visitor's parking lot which was at least 75 spaces where people could park for about the same cost. He did have serious concerns about making Amstel Avenue one way. One of the concerns was extra traffic circulating through the residential neighborhoods. Some people would drive down to Kent Way and then make a left or a right turn on Orchard, but then there were others who would just go down to Winslow and if they were going over the Apple Road bridge to get to their homes in Districts 1, 4 or 3, that was a natural way to do it. For this reason alone, he thought it was very questionable whether that is a good thing to do. He also wanted to point out that if they made Amstel one way, the many bike riders from the main part of campus who were currently using Amstel to travel westward when they went home would have two choices. One would be to ride illegally against traffic on Amstel, which was not good. The other would be to be riding on the sidewalks, which was legal but not very safe because they were often crowded with pedestrians. He urged that they divide this proposal and definitely go ahead with getting rid of the parking meters around South College and to hold off on the other things.

He also pointed out that it had been stated that the main reason for making that single block stretch of Amstel with parking meters on both sides was to basically not lose the revenue. There was a much simpler way of getting some extra revenue from parking meters, which was to raise the rate, which had not been increased in the last several years. He noted that people parking on Amstel for the most part were UD students. If it was really congested at the times of class changes with all kinds of people trying to parallel park in and out, students crossing the street in the middle of the block, he thought putting more parking on the street was a really bad idea, especially since they had a garage half a block away. Richard Rind had shared that lot never filled up. That was where people should be parking, not on Amstel.

Helga Huntley, District 1, echoed some of what Dr. Morgan said. She was concerned that if they made Amstel one way for that block, that bicyclists did not really have a good option. She was at the Traffic Committee when they were discussing this and she asked they consider putting a counter flow lane just for bicyclists, so bicyclists could continue to go westward on Amstel for that block. She was told there was no spacing for it. But she thought, just like Dr. Morgan was just saying, that bicyclists would continue not doing the detour on Kent Way and really just either going against traffic or going on the sidewalk. She encouraged Council to think about what they did with bicyclists who needed to go west on Amstel Road and other than that, removing the parking spaces on College would encourage bike travel.

MOTION BY MR. HAMILTON, SECONDED BY MR. LAWHORN: TO APPROVE THE ORDINANCE AMENDING CHAPTER 20, MOTOR VEHICLES, CODE OF THE CITY OF NEWARK, DELAWARE, BY MAKING AMSTEL AVENUE ONE WAY EASTBOUND FROM ORCHARD ROAD TO SOUTH COLLEGE AVENUE AND REMOVING PARKING ON SOUTH COLLEGE AVENUE.

MOTION PASSED. VOTE: 5 to 1.

Aye – Clifton, Hamilton, Lawhorn, Markham, Sierer.

Nay – Wallace.

Absent – Morehead.

(ORDINANCE NO. 18-15)

- 25. 10-C REQUEST OF T-MOBILE NORTHEAST, LLC FOR A SPECIAL USE PERMIT TO INSTALL TELECOMMUNICATIONS ANTENNAS ON THE EXISTING WATER TANK AT THE PROPERTY LOCATED AT 304 RESEARCH BOULEVARD**
-

03:08:28

Ms. Bensley read Item 10-C into the record.

Jonathan Jordan, T-Mobile LLC, reported they were seeking a Special Use Permit to install antennas on the water tank at 304 Research Boulevard on the STAR campus of the University of Delaware. This would be a replacement of the current tower which was at the Newark Regional Transportation Center and was being decommissioned in September. So, T-Mobile needed a new place to put their antennas and this was a perfect place because there were already other antennas on this water tower. They would build them into the catwalk around the water tower and then paint them blue so they would not notice them. They received a positive recommendation from staff and the Planning Commission. They met the specific requirements of the units and they did not conflict with the Comprehensive Plan. He noted there were various reports included in Council's packet and all of those exhibits were prepared under the auspices of the gentlemen sitting here. He was not going to have him give testimony, because it was late and this board had heard this sort of testimony many times before.

Mr. Clifton said there was a lot of information and he wanted to make sure this had all been included before. Mr. Jordan said everything that was in that packet had already been handed in and all of those reports that were in this packet were submitted by Mr. Fruehstorfer. Ms. Bensley assured Council that these were received from the applicant on Sunday, July 1 and all of the exhibits provided by the applicant at the meeting matched the exhibits that were submitted and included in their packet.

Mr. Markham confirmed this was on UD property. Mr. Jordan stated that was correct. Mr. Markham asked for confirmation that the STAR campus zoning required UD to come to the City for this approval. Staff confirmed this.

There was no public comment.

MOTION BY MR. MARKHAM, SECONDED BY MR. CLIFTON: TO APPROVE THE SPECIAL USE PERMIT BECAUSE IT WILL NOT CONFLICT WITH THE PURPOSES OF THE COMPREHENSIVE DEVELOPMENT PLAN V, BECAUSE THE PROPOSED USE PER THE DEPARTMENTAL COMMENTS WILL NOT BE INJURIOUS TO THE PROPERTY OR IMPROVEMENTS OF THE SURROUNDING AREAS AND BECAUSE THE USE WILL MEET ALL ZONING AND SPECIAL USE PERMIT REQUIREMENTS.

Mr. Markham would approve the Special Use Permit based on the affirmative recommendations in the Planning Department's report.

Ms. Wallace would be supporting the Special Use Permit for reasons stated by Mr. Markham.

Mr. Hamilton would be supporting the Special Use Permit for reasons stated by Mr. Markham.

Mr. Lawhorn would be supporting the Special Use Permit for reasons stated by Mr. Markham.

Mr. Clifton would be supporting the Special Use Permit for reasons stated by Mr. Markham.

Ms. Sierer would be supporting the Special Use Permit for reasons stated by Mr. Markham.

MOTION PASSED. VOTE: 6 to 0.

Aye – Clifton, Hamilton, Lawhorn, Markham, Sierer, Wallace.

Nay – 0.

Absent – Morehead.

26. 11. **ITEMS SUBMITTED FOR PUBLISHED AGENDA:**

A. **Council Members:** None

27. 11-B. **Others:** None

28. **Meeting adjourned at 10:24 p.m.**

Renee K. Bensley, CMC
Director of Legislative Services
City Secretary

/tas